

Conversely, respondent and its insurance carrier contend the January 9, 2004 Order should be affirmed. They argue claimant's present need for medical treatment, including shoulder surgery, stems from a May 2003 accident when claimant wrecked a four-wheeler, injuring his left shoulder.

The only issue before the Board on this appeal is whether claimant has proven his present need for medical treatment is related to the alleged accidents that he sustained at work.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date and the parties' arguments, the Board finds and concludes:

The January 9, 2004 Order should be affirmed. The Board agrees with the Judge that claimant has failed to prove his present need for medical treatment arises from either the October and November 2003 incidents at work in which his left shoulder dislocated or any other work activities.

An injury is compensable under the Workers Compensation Act even when an accident at work only serves to aggravate a preexisting condition.<sup>1</sup> The test is not whether the accident caused a condition but, instead, whether the accident aggravated or accelerated a preexisting condition.<sup>2</sup>

The evidence presented to date establishes that claimant initially injured his left shoulder in December 2000. In October 2001, Dr. Gary L. Harbin operated on claimant's shoulder to prevent it from dislocating. Claimant recovered from that injury and surgery but in late May 2003 wrecked a four-wheeler, dislocating his shoulder. Approximately two weeks later, claimant again dislocated his left shoulder while swimming. Neither the accident with the four-wheeler nor the swimming incident occurred during claimant's work.

Following the four-wheeler accident, claimant returned to Dr. Harbin for additional treatment. The doctor provided claimant with additional treatment and released him as of late July 2003 to return to his regular duties as a youth service worker.

On October 13, 2003, claimant dislocated his left shoulder while tying a knot in a rope used in an obstacle course. And on or about November 2, 2003, claimant again dislocated his shoulder while raising his arm playing football. Both of those incidents occurred while claimant was working for respondent.

While undergoing treatment following the four-wheeler accident, Dr. Harbin or the doctor's physician assistant, or both, told claimant additional surgery might be needed to

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<sup>1</sup> *Odell v. Unified School District*, 206 Kan. 752, 481 P.2d 974 (1971).

<sup>2</sup> *Woodward v. Beech Aircraft Corp.*, 24 Kan. App. 2d 510, 949 P.2d 1149 (1997).

prevent his left shoulder from dislocating. Consequently, the issue presented to Judge Moore at the preliminary hearing was whether claimant's present need for medical treatment was solely related to the May 2003 accident or whether the specific October or November 2003 incidents or other work activities contributed to that need for treatment. Unfortunately, Dr. Harbin, who has now seen claimant both before and after the October 2003 incident, did not provide any useful opinions regarding that issue.

Furthermore, respondent and its insurance carrier presented testimony from Jerry Grant, respondent's vice president of human resources, who testified claimant telephoned around October 8 or 9, 2003, and stated he was having shoulder problems, which he related to the accident with the four-wheeler.

Based on the present record, the Board finds no reason to disturb the Judge's findings and conclusions. Accordingly, the January 9, 2004 Order should be affirmed.

As provided by the Act, preliminary hearing findings are not binding but, instead, may be modified upon a full hearing on the claim.<sup>3</sup>

**WHEREFORE**, the Board affirms the January 9, 2004 Order.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 2004.

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BOARD MEMBER

c: Joni J. Franklin, Attorney for Claimant  
Janell Jenkins Foster, Attorney for Respondent and its Insurance Carrier  
Bruce E. Moore, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

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<sup>3</sup> K.S.A. 44-534a(a)(2).